to say nothing of a constructive murder. *Re Scott*, [1900] 1 Q. B. 372, 382. Nevertheless this construction is supported by several earlier cases. *Executors of Perry* v. *The Queen*, L. R. 4 Ex. 27; *Eager* v. *Furnival*, 17 Ch. D. 115. And it is extremely difficult to overcome the obstacle raised by the express provision of the statute that the devise shall take effect as if the death of the devisee "had happened immediately after the death of the testator." Possibly, had the question not been prejudiced by these earlier cases, more consideration might have been given to the argument of the counsel for the executors that the true effect would be given to the act, not by creating a fiction, but by causing the child's will to be read as part of the father's, supported as this contention is by the mode adopted in the United States of construing similar sections of the state acts. *Suydam* v. *Vorhees*, 43 Atl. Rep. 4 (N. J.); *Newbold* v. *Pritchett*, 2 Whar. Pa. 46. It is true that the American statutes are not phrased in precisely the same terms as the English act — generally, indeed, expressly providing that the issue of the devisee shall take the estate devised, Conn. Gen. Stat. 1875, tit. 18, ch. 11, p. 370, or, as in Pennsylvania, that such devise "shall be good and available in favor of such surviving issue" of the devisee, "with like effect as if such devisee had survived the testator." Bright. Purd. Digest, 1700–1872, vol. 2, p. 1476. The American courts contend that to hold that the original devisee took an interest would entirely defeat the objects for which these sections were inserted — namely to benefit the more remote descendants of the testator, and not to give scope to the caprices of the devisee by a distribution under his will, or to provide for the payment of his creditors.

The precise question of the principal case probably would not arise in New York or in several other States where the inheritance tax is expressly levied on the property of which a party dies "seised or possessed." N. Y. Laws of 1887, ch. 713, § 1. In Massachusetts and possibly in a majority of the States, however, the statute imposes the tax generally on all property "which shall pass by will or by the laws of the Commonwealth regulating intestate succession," and is thus substantially similar to the English Act. Mass. Laws of 1891, chap. 425.

THE PROTECTION OF THE STATE HOUSE AT BOSTON. — The statute of 1899, enacted with the object of protecting the State House at Boston from the encroachments of high buildings, has recently been passed upon by the Supreme Court of Massachusetts. The act provided that all buildings within a small district west of the State House should be limited to the height of seventy feet, and that, in so far as the act or proceedings to enforce it might deprive any person of rights existing under the Constitution, compensation should be recoverable by petition. Mass. Laws of 1899, c. 457. On petition by several owners of land affected to have the amount of their damages assessed, a demurrer was interposed by the state, the attorney-general contending that the statute was a valid exercise of the police power, and hence that no constitutional right was infringed so as to give the petitioners a claim for compensation. The court, however, speaking through Chief Justice Holmes, overruled the demurrer. They held that the statute could not be construed as a legislative adjudication that the public welfare required that this property should be so restricted without compensation in the exercise of the police power,

and that consequently there was a deprival of rights under the Constitution for which compensation was recoverable. In explanation of this construction the court said that in such an extreme case as this, the purpose of the act being one of luxury rather than of necessity, the legislature would have stated more clearly that the police power was to be relied on, if such had been their intent. The legislature not having expressly declared that this was to be an exercise of the police power, it was not for the court to do so, they said, and thus since for the public use a property right was taken away, — the right to build above seventy feet, — compensation must be given in accordance with the express terms of the act. *Parker* v. *Commonwealth* (not yet reported).

It is not easy to agree with the construction put upon the statute by the court. The act unqualifiedly forbids building above a height of seventy feet within a certain prescribed area, and in a separate section provision is made for the assessment of damages in case any rights under the Constitution are taken away by the act. Construing the statute with reference both to the legislation of 1898 in regard to Copley Square and the *dictum* of this same court that such a restriction upon the height of buildings might well be within the police power, — *Attorney-General* v. *Williams*, 174 Mass. 476, — it would seem that the legislative intent was that no compensation be given if that could be done constitutionally, and that the arrangement for provisional compensation was to save the statute from being declared void in case the court should decide that this was not a lawful exercise of the police power. Moreover, the chief justice's conclusion, that "the rights existing under the Constitution" for which compensation is to be made refer to the right of every man to build beyond the prohibited height, seems somewhat strained. The more natural meaning is the right to receive compensation where property is taken by the state under the power of eminent domain. A possible explanation of the strained construction put upon this statute is that the court were not agreed as to whether or not such a regulation could be a legitimate exercise of the police power, and that this expedient was adopted — and fitly so — to avoid the rendering of a decision by a divided court.

As to the question expressly left open by the court, whether this purpose could lawfully be effected by a police regulation without payment, the right is conceded in the dictum of this court in *Attorney-General* v. *Williams*, *supra*; and on principle it seems more in the nature of a regulation of how a man shall use his property than an actual taking of property, as some of the petitioners contended. See 13 HARVARD LAW REVIEW, 405. Consequently broad principles of constitutional construction would seem to admit of power in the legislature to make such a restriction without being under any legal duty to furnish compensation. The existence of the moral duty to do so in such a case is, of course, self-evident. As to the legal obligation, however, it must be remembered that the powers of police of a state are coextensive with the residuary legislative power, after the federal and local constitutional prohibitions on the power of the state, together with the more specific legislative powers, taxation, eminent domain, etc., are taken away. Thus the legislature has power to make all manner of regulations for public purposes, and the question is, in substance, not whether any given statute is within the police power, but whether due process of law has been observed, whether the act may reasonably be called a legitimate exercise of legislative power. This brings us to the question whether the purpose of the stat-

ute was a public or a private one; for if the latter, the act would be unreasonable. Admittedly, land may be taken for a public park or for a public square or boulevard under the right of eminent domain, and the public moneys raised by taxation may be expended in beautifying such places. And of course both eminent domain and taxation must be for a public use. Thus it is clear that a legislative purpose is none the less a public one because it is for the adornment and beautifying of a city. So here the avowed object of this act was to "save the dignity and beauty of the city at its culminating point for the pride of every Bostonian and for the pleasure of every member of the state." And the criterion of what is a public use is certainly the same in the exercise of the police power as it is in taxation and eminent domain. Thus the statute in question being a reasonable regulation, — its reasonableness seems unquestionable, — and for what is now generally recognized as a public use, although working harm, perhaps, to those affected by its provisions, might well have been considered a constitutional exercise of the police power of the state.

RECENT CASES.

BANKRUPTCY — ASSIGNMENT FOR BENEFIT OF CREDITORS — LEASES. — *Held*, that an assignee for benefit of creditors does not, by accepting the trust, necessarily become assignee of a lease of the debtor, but may within a reasonable time elect to reject it. *Wilder* v. *McDonald*, 59 N. E. Rep. 106 (Ohio).

A general assignment is sufficient to pass title to a lease, though it be not specifically mentioned. *Lowe* v. *Mason*, 140 Ill. 108, 113. And ordinarily the assignee of a lease, by accepting the deed, is held to accept the lease and render himself liable to its burdens. *Smith* v. *Goodman*, 149 Ill. 75, 80. However, it has become well established in this country, in accord with the present case, that an assignee for the benefit of creditors by accepting the deed merely accepts the trust, and that therefore he may enter upon the execution of the trust without becoming assignee of the lease, unless he elects to do so within a reasonable time. *Smith* v. *Goodman, supra; United States Trust Co.* v. *Wabash Western Ry. Co.*, 150 U. S. 287, 289. BURRILL, ASSIGNMENTS, 5th ed. 596. This is analogous to the universal rule as to trustees in bankruptcy. *Hanson* v. *Stevenson*, 1 B. & A. 305. On principle, it seems entirely sound, for, in view of the purpose of the assignment, it cannot be within the scope of the trust to accept burdensome property which goes to diminish the fund arising from other sources, and tends to defeat the object of the assignment.

BANKRUPTCY — EXEMPTIONS — LIFE INSURANCE POLICIES. — The Bankrupt Act of 1898, § 6, provides that "this act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the state laws." § 70 vests the bankrupt's title to property in the trustee "except in so far as it is exempt, provided that if he assures to the trustee the cash surrender value of any insurance policy payable to his estate, he may hold the policy free from the claims of creditors; otherwise the policy shall pass to the trustee as assets." The bankrupt held a policy in his own favor which was exempt under the state law. *Held*, that the policy, in the absence of security for its cash surrender value, passes to the trustee as assets. *In re Scheld*, 104 Fed. Rep. 870 (C. C. A., Ninth Cir.).

Held, that such a policy is exempt in proceedings under the Act. *Steele* v. *Buel*, 104 Fed. Rep. 968 (C. C. A., Eighth Cir.).

This question was first considered by a district court of the eighth circuit, and it was held that the policy was not exempt. *In re Lange*, 91 Fed. Rep. 361. That early decision is relied upon in the first of the cases above, and has been accepted without discussion of its merits by all the text-writers. LOVELAND, BANKR., p. 511; LOWELL,